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UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 BOARD OF TRUSTEES OF THE SHEET) NO. C 08 0306 BZ
12 METAL WORKERS, et al.,)
13) NOTICE OF MOTION AND
14 Plaintiffs,) MOTION FOR DEFAULT
15) JUDGMENT AND
16 vs.) ATTORNEYS' FEES;
17) POINTS AND AUTHORITIES
18 C R SCHELLENGER H V A C INC.,) IN
19 etc.,) SUPPORT THEREOF
20) [F.R.C.P. 55(b)(2)]
21 _____
22)

DATE: August 13, 2008
TIME: 10:00 a.m.

18 TO DEFENDANT:

19 PLEASE TAKE NOTICE that on Wednesday, August 13, 2008, at
20 10:00 a.m., or soon thereafter as counsel may be heard, before the
21 Honorable Bernard Zimmerman, Magistrate Judge of the United States
22 District Court, Northern District of California, 450 Golden Gate
23 Avenue, Courtroom G, 15th Floor, San Francisco, CA, plaintiffs BOARD
24 OF TRUSTEES OF THE SHEET METAL WORKERS HEALTH CARE PLAN OF NORTHERN
25 CALIFORNIA, SHEET METAL WORKERS PENSION TRUST OF NORTHERN
26 CALIFORNIA, SHEET METAL WORKERS LOCAL 104 VACATION, HOLIDAY SAVINGS
27 PLAN; ANTHONY ASHER, TRUSTEE, will and do move this court, pursuant

1 to Rule 55(b)(2) of the Federal Rules of Civil Procedure, to enter
2 a default judgment and award plaintiff unpaid contributions,
3 liquidated damages, interest, court costs, and attorneys fees.

4 This motion is made on the grounds that defendant has
5 failed to appear herein after valid service, the default of
6 defendant was entered by the Court on March 27, 2008, and there are
7 no triable issues of fact or disputes at law. Defendant has a
8 contractual obligation to pay contributions to the SHEET METAL
9 WORKERS HEALTH CARE PLAN OF NORTHERN CALIFORNIA, SHEET METAL
10 WORKERS PENSION TRUST OF NORTHERN CALIFORNIA, SHEET METAL WORKERS
11 LOCAL 104 VACATION, HOLIDAY SAVINGS PLAN, and has failed to do so
12 in a timely manner. This motion is based upon this Notice,
13 Memorandum of Points and Authorities in Support Thereof, the
14 Declarations of Carl Sanchez, Bonnie Maraia, and Michael J.
15 Carroll in Support of Motion for Default Judgment filed herewith,
16 and such further oral or documentary evidence as may be presented
17 at the hearing of this motion.

18 DATED: July 8, 2008 ERSKINE & TULLEY

19

20 By: /s/ Michael J. Carroll
21 Michael J. Carroll
22 Attorneys for Plaintiffs

23 MEMORANDUM OF POINTS AND AUTHORITIES

24 I.

25 INTRODUCTION

26 In this ERISA collection action plaintiffs, BOARD OF
27 TRUSTEES OF THE SHEET METAL WORKERS HEALTH CARE PLAN OF NORTHERN
28 CALIFORNIA, SHEET METAL WORKERS PENSION TRUST OF NORTHERN
CALIFORNIA, SHEET METAL WORKERS LOCAL 104 VACATION, HOLIDAY SAVINGS
PLAN; ANTHONY ASHER, TRUSTEE, seek to recover employee benefit

1 contributions, liquidated damages and interest for the months of
2 October 2007 through January 2008 on Employer Account Number 318225
3 and for the months of October through December 2007 on Employer
4 Account Number 326720. The total amount due is \$34,229.65.

5 Defendant, C R SCHELLENGER H V A C INC., a California
6 corporation, doing business as CRS H V A C INC., is an employer
7 which is currently delinquent in its health & welfare, pension and
8 other fringe benefit contribution obligations.

9 Under the terms of the Trust Agreements a contribution is
10 due not later than the 20th day of the following month, Exhibit 2,
11 Item III, Section B, page 8, and is delinquent if not received by
12 that date.

13 The complete list of delinquent months and amounts is set
14 forth in Exhibit 3 to the Maraia Declaration. The amounts due have
15 been computed based on information given to the Trust Funds by
16 defendant. Obviously the amount may change by the date of the
17 hearing if defendant either makes payments or falls further behind.
18 Plaintiffs will update this information by a supplemental
19 declaration if a change in the amount due occurs.

20 Under the terms of the Trust Agreement of the Sheet Metal
21 Workers Pension Trust of Northern California to which defendant is
22 specifically bound by its contract, failure to make timely payment
23 results in the following consequences:

24 A. Liquidated damages in an amount equal to
25 20% of the amount of contributions due, Exhibit
26 2, Item III, Section C, page 9, and the amended
procedures attached to Exhibit 2.
27 B. Interest at rates determined by formula,
Exhibit 2, Item III, Section C, page 9.
28 C. Attorneys fees, Exhibit 2, Item III,
Section E, page 12.

1 The other trust agreements contain the same language.

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3 III.
FACTUAL BACKGROUND

5 Defendant has entered into a collective bargaining
6 agreement with Sheet Metal Workers Local Union No. 104 which
7 requires that health & welfare, pension and other fringe benefit
8 contributions be paid on behalf of covered employees to the
9 Sheet Metal Workers of Northern California Trust Funds. Exhibit
10 1 to the Sanchez Declaration. This contract binds defendant to the
11 terms and conditions of each of the Agreements and Declarations of
12 Trust of each Trust Fund of plaintiff. See Exhibit 2 to the Maraia
13 Declaration, the Agreement and Declaration of Trust of the Sheet
14 Metal Workers Pension Trust of Northern California.

15 III.

16 SEPARATE STATEMENT OF UNDISPUTED FACTS

17 Every essential allegation of the complaint is proved by
18 the affidavits submitted herewith:

<u>COMPLAINT PARAGRAPH</u>	<u>COMPLAINT ALLEGATION</u>	<u>PROOF OF ALLEGATION</u>
1	Jurisdiction	Carroll Decl. 29 U.S.C. § 1132, 1145; 29 U.S.C. § 185(a)
2	Status of Plaintiffs	Carroll Decl.
5	Defendant bound by contract to pay contributions	Sanchez Decl., Exhibit 1
6,7,8,10	Defendant has failed to pay contributions in a timely manner	Maraia Decl., Exhibit 3
9	Demand has been made	Carroll Decl.
12	Contract documents provide for	Exhibit 2

attorneys fees

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IV.
ARGUMENT

A. PLAINTIFFS ARE ENTITLED TO RECOVER LIQUIDATED DAMAGES, INTEREST AND ATTORNEYS FEES AS A MATTER OF LAW

An award of liquidated damages, interest and attorneys' fees is mandatory under 29 U.S.C. § 1132(g).

CONCLUSION

It is respectfully submitted that plaintiffs are entitled to default judgment according to proof.

DATED: July 8, 2008

ERSKINE & TULLEY

By: /s/ Michael J. Carroll
Michael J. Carroll
Attorneys for Plaintiffs

PROOF OF SERVICE

2 I, DIANE ANDRADE, the undersigned, hereby certify and
3 declare under penalty of perjury that the following statements are
4 true and correct:

5 1. I am a citizen of the United States and employed in
6 the City and County of San Francisco, California. I am over the
7 age of eighteen years and not a party to the within above entitled
8 action.

9 2. My business address is 220 Montgomery Street, Suite
10 303, San Francisco, California 94104.

11 3. On July 8, 2008 I caused a true copy of the attached
12 documents NOTICE OF MOTION AND MOTION FOR DEFAULT JUDGMENT &
13 ATTORNEYS' FEES; POINTS & AUTHORITIES IN SUPPORT THEREOF;
14 DECLARATIONS OF CARL SANCHEZ, BONNIE MARAIA, MICHAEL J. CARROLL IN
15 SUPPORT OF MOTION FOR DEFAULT JUDGMENT; ORDER AND DEFAULT JUDGMENT
16 to be served on the following person(s) in the manner indicated
17 below:

18 C R Schellenger HVAC Inc.
19 Alex and Connie Schellenger
11 Terrace Drive
Calistoga, CA 94515

22 : Served by deposit in the United States mail in a sealed envelope with the postage thereon fully prepaid.

24 Executed on July 8, 2008 at San Francisco, California.

/s/ Diane Andrade
DIANE ANDRADE